

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 04-CR-241

NING WEN,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S RECOMMENDATION
WITH RESPECT TO DEFENDANT'S MOTION TO DISMISS BASED ON
SEPARATION OF POWERS AND TREATY ARRANGEMENTS**

Defendant Ning Wen is charged in a nine-count indictment with violating United States' law by exporting restricted items to the People's Republic of China, making false representations about the value of the exported shipments, money laundering, and making false statements to agents of the Federal Bureau of Investigation in conjunction with the investigation. Wen moved to dismiss all or portions of the first eight counts on the ground that the law upon which the substantive charges are based, the Export Administration Act ("EAA"), 50 App. U.S.C. § 2401 *et seq.*, had expired and the executive orders issued by the Presidents Clinton and Bush under the International Emergency Economic Powers Act of 1977 ("IEEPA"), 50 U.S.C. § 1701, *et seq.*, to extend it were invalid. Wen also sought dismissal on the ground that the export restrictions violate the United States' treaty obligations to the Peoples Republic of China (PRC).

Pursuant to 28 U.S.C. § 636(b)(1), Wen's motion was referred to Magistrate Judge Aaron E. Goodstein, who on August 17, 2005, issued a recommendation that the motion be denied. In a

thorough decision accompanying his recommendation, Judge Goodstein concluded that the EAA had been properly extended by Executive Orders entered by Presidents Clinton and Bush and that Wen lacked standing to challenge the indictment on the ground that it violates treaty obligations between the United States and the PRC. Wen filed a timely appeal from the Magistrate Judge's recommendation and the motion is now ripe for decision.

Having considered the briefs submitted by the parties and Wen's appeal, I now adopt the recommendation of Magistrate Judge Goodstein as my decision in this matter and deny the motion to dismiss. For the reasons stated by Judge Goodstein, I conclude that the executive orders issued by Presidents Clinton and Bush under the IEEPA extending the EAA when Congress failed to act prior to its expiration date constituted the proper exercise of the power conferred upon them by the IEEPA. The power conferred upon the President by Congress was properly circumscribed and does not constitute an unconstitutional delegation of power to the executive branch or violate the principle of separation of powers. I also agree with Magistrate Judge Goodstein that Wen lacks standing to assert rights under the international treaties he cites. He was not a party to the agreements and none of the agreements contemplate the creation of private rights for citizens of either country. Accordingly, his motion to dismiss on these grounds is **DENIED**.

SO ORDERED.

Dated this 6th day of September, 2005.

s/ William C. Griesbach

William C. Griesbach
United States District Judge